IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2365 OF 2003

Arvind Dyeing & Bleaching Mills Ltd. ..Petitioner.

Vs.

Regional Provident Fund Commissioner & anr. ..Respondents.

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Mr.M.S.Topkar for the Petitioner.

Ms.S.V.Bharucha for Respondent Nos.1 and 2.

...

CORAM : DR.D.Y.CHANDRACHUD, J.

21st October, 2005.

P.C. :

Rule. Heard forthwith.

1. The Petitioner is a company incorporated under the Companies Act, 1956 and carries on the business of bleaching and dyeing. The Petitioner is stated to have commenced implementation of the provisions of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 with effect from December 1994. On 19th June, 1995 a formal

application was submitted to the Assistant Provident Fund Commissioner, Kolhapur seeking coverage under the provisions of the Act and a consequential allotment of a code number. Since no immediate communication was received from the authorities, the Petitioner deposited the contributions from the salaries of its employees together with its own contribution in the State Bank of India under the head "Code Number - applied for". The Second Respondent was accordingly informed and on 11th March, 1996 a further request was made for the allotment of a code number. Despite the lapse of two years, no code number was allotted to the Petitioner. A reminder was once again addressed to the authorities on 5th February, 1997. The State Bank of India declined to accept the deposits which were being made by the Petitioner with effect from January, 1997, since no code number under the provisions of the Act had been allotted to the Petitioner. It has been stated that on 14th March, 1997 the Petitioner complied with a requisition from the Second Respondent by furnishing necessary documents. It was only on 4th November, 1997 that the Second

Respondent communicated that a code number was allotted to the Petitioner and that the establishment was covered under the provisions of the Employees' Provident Fund scheme, Family Pension Scheme and Deposit Linked Insurance Scheme with effect from 1st December, 1994.

2. On 6th May, 2002 a notice was issued to the Petitioner by the Second Respondent purporting to be in the exercise of powers conferred by Section 7-Q and 14-B and calling upon the Petitioner to explain as to why interest contemplated at Rs.63/- and damages under Section 14-B should not be levied on account of the belated payment of the Provident Fund dues. The Petitioner submitted a reply on 5th October, 2002 clarifying that as far back as on 19th June, 1995 it had applied for the allotment of a code to the Provident Fund authorities and had followed up that request with several reminders on 11th March, 1996, 5th February 1997. Thereafter on the request of the enforcement officer, documents were supplied on 14th March, 1997. Since no code was allotted to the Petitioner, a further request was made on 30th September, 1997 and it was only on

4th November, 1997 that the Petitioner was allotted a code covering its establishment from 1st December, 1994. The Petitioner stated that even before the allotment of the code, it had duly deposited its contribution from December 1994 which had been placed in a suspense account by the bank. In these circumstances, it was submitted that there was no negligence on the part of the Petitioner in complying with the provisions of the Act and that the levy of interest and damages was not warranted.

3. The impugned orders were passed by the Regional Provident Fund Commissioner on 2nd December, 2002 by which the demand for damages in the amount of Rs.16,350/- and interest in the amount of Rs.63/- came to be confirmed.

4. When this Petition came up for admission, a notice was issued on 10th April, 2003 conditional on the Petitioner depositing an amount of Rs.16,350/- and Rs.63/- respectively as directed in the impugned orders dated 2nd December, 2002 within a period of three weeks before the Court. Counsel appearing for the Petitioner states that in

compliance with the orders of the Court, a deposit has been made, though directly, before the Provident Fund authorities. On behalf of the Petitioner, it has been submitted that the facts of this case would amply demonstrate that there was absolutely no negligence or default on the part of the Petitioner in complying with the provisions of the Act. The Petitioner had voluntarily sought coverage under the provisions of the Act and had sought the allotment of a code on 19th June, 1995. Deductions were made with effect from December 1994 and the deductions so made together with the employer's contribution were deposited in the bank. Since no code had been allotted, the amount was placed under a suspense account. Since the Provident Fund authorities did not allot a code, the bank refused to accept the deposits. Eventually a code was allotted on 4th November, 1997. The impugned order passed by the Regional Provident Fund Commissioner is founded on the view that the application of the Act does not depend upon the vigilance of the department or willingness of the employer. However, what the Provident Fund authorities have clearly overlooked is the

circumstance that the Petitioner had on 19th June, 1995 sought the allotment of a code. The Petitioner has stated that in fact even before the code was allotted, deductions were made and these came to be deposited in the bank account. In similar circumstances, a Division Bench of this Court had held in **Abhijat Samayadrashika Maharashtra Ltd. v. Union of India v. Union of India-** 1995 1 CLR 655 that the imposition of damages under Section 14-B of the Act is penal in nature and where the employer had immediately approached the authorities for the allotment of a code and in the meantime deposited the amounts in a separate account, it would not be held that there was any negligence on the part of the employer to comply with the provisions of the Act.

5. An affidavit in reply has been filed in these proceedings in which it has been stated that the Petitioner started remitting the dues with effect from 20th January, 1996. Furthermore it has been submitted that the department had taken some time in evaluating the case of the Petitioner for the allotment of a code number under the provisions

of the Act, particularly since it was necessary to examine the nexus of two companies which were stated to be situated at the same address. At the hearing of this Petition, it was urged on behalf of the Respondents that the Petitioner should be relegated to the remedy of an appeal under Section 7-I of the Act.

6. As noted above, in compliance with the interim directions, the Petitioner has deposited the entire amount of damages and interest with the Provident Fund authorities already. Having regard to the fact that the Petition has been entertained on 10th April, 2003 and the interim order that has been passed, as well as having regard to the fact that the amount which is involved in these proceedings is only Rs.16,400/- approximately, I am of the view that it would not be appropriate nor in the interests of justice, to require the Petitioner at this stage to file an appeal before the Tribunal which is situated at New Delhi. In my view, the ends of justice would be served if the Provident Fund authorities are directed to reexamine the entire issue and the liability of the Petitioner to

pay damages and interest afresh. The amount which has been deposited by the Petitioner shall continue to lie in deposit with the Second Respondent and shall abide by the final result of the proceedings. In order to facilitate a fresh consideration of the matter, the impugned orders dated 2nd December, 2002 (Exh.G-1 and G-2) are quashed and set aside. The Petitioner shall appear before the Second Respondent for directions on 28th November, 2005 at 11.00 a.m. so that necessary directions can be issued for the hearing of the matter. It would be open to the Petitioner to file any additional representation, if any, on or before the aforesaid date. The Petition is accordingly disposed of. There shall be no order as to costs.